IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 60 OF 1999.

Bhausaheb Punja Shinde,
At present Aurangabad Jail,
residing at Khadak Sukene,
Taluka: Dindori, Dist: Nashik
and Kadawa Sahakari Sakhar Karkhana
Room No.2, Chatai Chawl,
Taluka Dindori, Dist: Nashik. ..Petitioner.

versus.

The State of Maharashtra. ..Respondent.

Shri. A. Q. Ansari for the appellant.

Smt. V. R. Bbosale, A.P.P. for the respondent - State.

CORAM: S.B.MHASE, &
S.R.SATHE, JJ.

DATE : JUNE 9, 2005.

Oral Judgment (Per S.B.Mhase,J.):

. This appeal is directed against the judgment and order of conviction and sentence passed in Sessions Case No. 79 of 1998 on 1.1.1999 by the IIIrd Additional Sessions Judge at Nashik. By the said judgment, Appellant (hereinafter referred to as "accused") was convicted under section 302 and 498A of the Indian Penal Code (hereinafter, in short referred to as "the IPC") was/is sentenced to undergo imprisonment for life and to pay fine of

Rs.2,000/-, in default of fine to undergo R.I. for six months for offence punishable under section 302 of the IPC and was/is further sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.3,000/-, in default to undergo rigorous imprisonment for six months for the offence punishable under section 498A of the IPC.

2. Prosecution case in brief is as under:

. Accused - appellant and late Pushpa were married on 28.6.1997. After marriage, accused and deceased - Pushpa stayed at Khandesukhane along with the brother and mother of the accused for a period of two months. Accused at the time of marriage was employed with Kadawa Sugar Factory on daily wages and accused was allotted Room no.2 in temporary chawl of said factory on or about 20/8/1997. Therefore, the accused and late Pushpa came to reside at factory site in the said chawl. According to the prosecution the accused started to harras Pushpha while residing there by prohibiting her from seeing any woman and person. Accused also started to demand Rs.50,000/- for purchase of motorcycle and on that count Pushpa was left at her parental house

by the accused. However, brother of the accused twice intervened and brought Pushpa back to the accused. It is further case of the prosecution that few days earlier to incident Pushpa was brought to the accused at factory site but ill-treatment and harassment continued and ultimately on 8.1.1998 at about 4.00 a.m. accused poured kerosene on the face of Pushpa while she was sleeping. Having realised that something cold had fallen on face, Pushpa got up and found that accused had thrown kerosene on her face. Therefore, Pushpa ran outside by opening latch. However, while she was running outside accused had thrown ignited match stick on her and thus set her on fire. Hearing the cries of Pushpa neighbours gathered and extinguished fire. Thereafter, Shivaji Thomabre, a clerk from the security department of the factory residing opposite to the room of the accused gave information to the superiors and on the direction of the superior, brought the Medical Officer of factory to examine Pushpa and thereafter made an arrangement to shift Pushpa to Civil Hospital, Nashik as per doctor's advise. At about 6.40 a.m. Pushpa was admitted in Civil Hospital, Nashik. Thereafter her statement was recorded by Mr. More, Special Judicial Magistrate at about 8.30 to 9.00 a.m. Said Pushpa

had indicted accused. The offence under section 307 and 498A of the IPC was registered at Dinderi police station at about 2.20 p.m. on the basis of statement recorded by the Special Judicial Magistrate. Thereafter accused was arrested on 9.1.1998 at 17.00 hours. However, Pushpa died in the Civil Hospital at about 10.15 p.m. on 9.1.1998. Inquest was carried on her dead body on 16.1.1998 at 7.00 a.m. and thereafter post mortem examination was made by Dr. Wanere of the Civil Hospital, Nashik. Advance death certificate showed that Pushpa died of 100% burn injuries which resulted into cardio respiratory arrest. Thereafter offence under section 302 of the IPC was added. After completing the investigation, charge-sheet under sections 302 and 498A was filed. After trial accused was convicted as stated above and therefore this appeal.

3. The learned counsel for the accused challenges the conviction on several grounds. According to the learned counsel the accused was not responsible for the death of Pushpa. Learned counsel submitted that accused had not demanded amount of Rs.50,000/- for purchase of motor cycle

and had not harrased and treated her with cruelty for that purpose. He submitted that accused all the while had treated deceased very nicely and properly. He emphasised that accused never prohibited the deceased from talking and/or seeing any woman in the chawl. He submitted that accused had never beaten Pushpa or had abused her. The learned counsel submitted that prior to marriage of deceased Pushpa with the accused, said Pushpa was shown to another educated boy whom Pushpa had disapproved and married with the accused. However, said boy was insisting for marriage with Pushpa and mother of Pushpa was insisting of such marriage, and therefore being under pressure and tension deceased Pushpa had committed suicide by pouring kerosene on her person and setting herself of fire. Learned counsel very heavily relied on statement reflected in introductory part of panchnama Exhibit-11, namely, Inquest, and submitted that police were knowing that death of Pushpa was suicidal. According to the learned counsel death of Pushpa was not homicidal but it was suicidal and therefore the accused is not liable for punishment under section 302 and 498-A of the IPC. Learned counsel also submitted that prosecution sotry is concocted one, since Pushpa had died of burn injuries, at the hands of the

prosecution witnesses and police. Learned counsel submitted that deceased Pushpa was having 95% to 100% burn injuries and that due to such serious injuries Pushpa was not in a position to talk and depose and thus challenged the statement recorded by the Special Judicial Magistrate. He further submitted that Dr. Shankhpal's evidence is not trustworthy to infer that deceased was in a position to make statement. Learned counsel also submitted that oral dying declaration deposed to by Pw.1, Pw.3, Pw.5 & Pw.7 cannot be relied on since these witnesses are highly interested in conviction of the accused as those witnesses are close relatives of deceased Pushpa. The learned counsel also tried to rely on the fact that FIR was registered late and was informed to the Judicial Magistrate, F.C. at very belated stage and submitted that all this material raises a serious doubt about the prosecution case and investigation. He submitted that defence evidence of the accused has reasonably established that the death of Pushpa was suicidal one and there was no harassment or illtreatment to deceased Pushpa. Learned counsel relied upon AIR-1963 SC 420, 1996 Cr.L.J. 1507 and 1997 Cr.L.J. 372 and submitted that it is unsafe to rely upon a uncorroborated dying declaration because the

deceased suffering 100% burn injuries may not be in a position to make statement and may be in imaginative state of mind. Thus, the learned counsel prayed for acquittal of the accused.

4. In this case prosecution has examined in all 14 witnesses. In order to prove that the death of Pushpa was homicidal one the prosecution has examined Pw.11 (Dr.Kanchan Wanere) at Exhibit-38, who carried out the post mortem on the dead body of the deceased Pushpa. Pw-2 (Nandu Gatkal) has been examined as panch witness to the spot panchnama wherefrom articles 1 to 4 were recovered. So also there was an inquest panchnama at Exhibit-11 and Chemical Analyser's report is at Exhibit-15. Pw.1 (Hirabai Mhaskar), Pw.3 (Pandurang Ugale), Pw.5 (Shakuntalabai Bhujade), Pw.7 (Lilabai Bendkule) have been examined by the prosecution to prove the ill-treatment and harassment at the hands of the accused to the deceased Pushpa so as to prove offence under section 498-A of the IPC. These witnesses have also been examined to prove the oral dying declarations of the deceased Pushpa made to these witnesses while she was in Civil Hospital, Nashik. Pw.6 Sudhakar More Special Judicial Magistrate has been examined to prove the dying

declaration at Exhibit 29 of the deceased Pushpa. Pw.10 (Dr. Madhukar Sankhpal) has been examined to prove the endorsements made by him on dying declaration Exhibit 29 to the effect that Pushpa was fit to make a statement. Pw.8- Ragho Pawar has been examined by the prosecution to prove that room no. 2 of temporary chawl where the incident has taken place was allotted by the Sugar Factory to the accused and further to prove that on 7.1.1998 and 8.1.1998 the accused was on leave. Pw.9 (Shivaji Tombare) is a clerk from the security department of the Sugar Factory who was residing opposite to the place of the offence. He had informed about the incident to the officers of the factory and on their instructions had made an arrangement to take the factory doctor to examine Pushpa and on the advice of the Doctor he had shifted Pushpa to Civil Hospital, Nashik. Pw.12 (Jagnnath Vithoba Kale), A.S.I, has registered the crime and carried out the investigation till section 302 of the IPC was added. Pw.14 (Kailas Nivruti Gavade) is PSI who has investigated the crime after section 302 was added on the death of Pushpa and has filed the charge-sheet.

5. From the evidence of Pw.10 (Dr. Madhukar

Yashwant Shakhpal) it is established that when at 6.40 a.m. on 8.1.1998, deceased Pushpa was admitted in the civil hospital, she had sustained 95% burn injuries. The inquest panchnama, Exhibit-11 which was prepared on 10.1.1998 at 7.00 a.m. also shows that there were burn injuries on the face, neck, chest, stomach, both hands, waist, thighs and calves of deceased Pushpa. Pw.-11 (Dr.Kanchna Narayan Wanere) had carried out the post mortem in view of the letter dated 10.1.1998 given by the police constable of Sarkarwada police station, which is at Exhibit 39. This witness has deposed that the deceased was having 100% burn injuries and the said doctor had issued advance death certificate (Exhibit-42) on 10.1.1998 to the effect that the death of Pushpa was caused due to cardio respiratory arrest due to extensive burns. The detailed post - mortem report is at Exhibit-42. All this prosecution evidence conclusively proved that the deceased Pushpa expired due to the burn injuries and the death of Pushpa was unnatural one. However, according to the prosecution the death of Pushpa was homicidal one since it was caused by the accused by pouring kerosene on her person and setting her on fire. As against this, the case of the defence is that Pushpa had committed suicide by pouring

kerosene on her own person and setting herself on fire. Therefore, while considering the legality and correctness of the conviction of the accused under section 302 of the IPC it has become necessary for this Court to find out and scrutinise as to whether the death of Pushpa was homicidal one or suicidal one. And, if it is homicidal one as to whether the accused is responsible for causing such death.

6. From the evidence of Pw.8 Ragho Daulat Pawar, Security Officer from the Sugar Factory it is established that the accused was employed as a watchman on daily wages with the Kadva Sugar Factory and that room no.2 of the temporary chawl of the sugar factory was allotted to the accused with effect from 20.8.1997. The letter to that effect has been brought on record. This witness has also deposed that on 7.1.1998 and 8.1.1998, ie., immediately prior to the incident the accused was on leave and he proved Exhibit-35.

7. It is revealed from Exhibit-18 (spot panchnama) that opposite to the temporary chawl where the incident has taken place there is a permanently constructed chawl of the sugar factory and Pw.9 Shivaji Thombare was resident of the said

chawl which was opposite to the place of the incident. Shivaji Thombare has deposed that on the day of the incident, during morning he heard the cries that the wife of the accused had sustained burn injuries, therefore, he proceeded to his office in tempo-trax and informed about the incident to the checker. He has further stated that he has taken two watchmen and brought the medical officer of the factory hospital to examine Pushpa. He has stated that as per the orders of the Managing Director of the factory he arranged for driver- Shantaram Shankar and shifted Pushpa to the Civil Hospital Nashik. It is revealed from the cross examination of this witness that this witness had driven the vehicle taking Pushpa upto village Varkhade and at village Varkhade, vehicle was handed over to driver Shantaram Shankar who ultimately took the said vehicle to the civil hospital, Nashik. It further appears from the evidence of Dr. Sankhpal (Pw.10) that deceased was admitted in the said hospital at 6.40 a.m.. So far as evidence of these witnesses, namely, Pw.8 & Pw.9 is concerned, said evidence is not seriously challenged by the accused. On the contrary, in a statement recorded under section 313 of the Code of Criminal Procedure, this evidence has been accepted by the accused.

8. Pw.5 Shakuntalabai Baburao Bhujade, mother of the deceased - Pushpa, has stated that marriage of Pushpa was performed on 28.6.1997 and for a period of two months after the marriage the accused and Pushpa were residing at village Khadaksukhane. Pw.5 further deposed that since the accused was watchman in Kadwa sugar factory he got a room at factory site and therefore, deceased Pushpa and accused shifted to reside in that room. This witness (Pw.5) has further stated that 15 days thereafter the accused started illtreatment and harassment to deceased Pushpa and within a period of three weeks of their stay at factory site, Pushpa was left with this witness. Pushpa stayed with this witness for 8 days. However, the brother of the accused, namely, Ashok, intervened and took Pushpa back. Thereafter for 15 days Pushpa stayed with the accused. However, the accused sent back Pushpa to this witness. This witness has categorically stated that Pushpa disclosed that accused was demanding Rs.50,000/- for purchasing motor cycle, and that the accused was beating and abusing her. Pushpa further disclosed that the accused was suspecting and asking her as to why she was speaking with others and was restraining her from speaking with other women. 8

days prior to the incident, the brother of the accused came for the second time along with Pw.3 who is brother of Pw-5. At that time again Ashok intervened and convinced Pushpa and had taken her back to stay at factory site. Pw.5 has further stated that on 6th January 1998 this witness had been to Pushpa in the room at factory site and stayed there for a night and came back on 7.1.1998. At that time the accused insisted this witness to take Pushpa back telling that though Pushpa may be precious, he did not need her. This witness has further deposed that the accused told that he had demanded Rs.50,000/- from Pushpa and further asked whether Pushpa had told it to this witness. He stated that said amount was demanded for motor cycle. This witness told to the accused that Pushpa had not conveyed the demand of the accused and that Pw.5 is a labourer and cannot provide such fund. This witness has further stated that the accused demanded Rs.50,000/- from her and asked to secure such amount from the brother of the said witness, i.e., maternal uncle of Pushpa (who is Pw.3). Pw.5 further deposed that she therefore went to her brother at Jopul and conveyed the demand of the accused and came to her place of residence - Pimpalgaon on 7.1.1998. This witness has further

disclosed that on 8.1.1998 during early morning hours she received a phone message that Pushpa had sustained burn injuries and Pushpa was admitted in Civil Hospital, Nashik. Therefore, Pw.5 along with other women approached to the Civil Hospital Nashik. When this witness (Pw.5) had seen Pushpa, this witness enquired with Pushpa as to how she sustained burn injuries. Whereupon Pushpa informed this witness that Pushpa was asleep, at 4.00 a.m., kerosene was poured on her person by the accused and when she tried to run away opening the latch of the door, the accused threw a burning match stick towards her, and thus she sustained burn injuries. Pushpa further disclosed that neighbours arrived there and extinguished her fire. Pushpa had also informed that the kerosene was poured for a demand of Rs.50,000/-.

9. This witness has been thoroughly cross examined as to the point of time when this witness received information of the incident and as to the time when this witness came to the hospital. It has transpired in the cross examination that this witness had come to the civil hospital along with Heerabai Mhaskar, Leelabai Bendukule, Nandabai Gangurde. Though the questions were asked that the

accused had not poured kerosene and set Pushpa on fire and the accused had not demanded the amount of Rs.50,000/- for motorcycle, all these suggestions have been denied by this witness. On the contrary, it was suggested that Pushpa committed suicide and at the relevant time accused was sleeping in the said room and it was the neighbours arrived there seeing fire and accused was awaken. All these suggestions have been denied by Pw.5. It is further attempted to suggest to this witness that there was proposal of marriage of Pushpa with somebody else when the marriage proposal of Pushpa was considered with the accused and that other boy was highly educated. But Pushpa disapproved that proposal. These suggestions have been denied by this witness. It is further suggested that 8 days prior to the incident, Pushpa was insisting the accused for divorce contending that the first educated boy was insisting for marriage and she was intending to marry him. This suggestion has also been denied.

10. Suffice it to say at this stage that the testimony of this witness, as deposed in the chief examination is not anyway affected by the cross examination. Therefore, we find that this witness is a truthful witness and the evidence of this

witness is acceptable.

11. Pw.3 (Pandurang Sadashiv Ugale) is the maternal uncle of the deceased Pushpa and is the brother of Pw.5 (Shakuntalabai). Pw.3 has deposed that Pushpa and accused were married on 28.6.1998, and initially for a period of two months they resided at village Khadaksukhane and thereafter shifted to reside at Kadva sugar factory. He has deposed that Pushpa was left at the house of Pw.5 and after 3/4 days she was again sent to the accused. Pw.3 further deposed that for the second time Pushpa was sent back to Pw.5 (her mother). At that time it was decided by this witness and Pw.5 that unless two respected persons intervene Pushpa should not be sent back to the accused. This witness has further deposed that after eight days the brother of the accused, namely, Ashok came and therefore this witness along with Ashok went to the house of Pw.5 and since Ashok had intervened in the matter and convinced Pw.5 & Pw.3, Pushpa was sent along with Ashok back to the accused. This witness has also deposed that when this witness asked Pushpa as to why she was being sent back, whereupon Pushpa told to this witness (Pw.3) that the accused was contending that Pushpa was looking for somebody else

here and there and thereby prohibiting her from speaking with other people. He (Pw.3) has further deposed that after Pushpa was sent back for the second time, 8 days prior to the incident, this witness had visited the room of Pushpa at factory site. He enquired with her as to where was her mother-in-law, whereupon Pushpa replied that mother-in-law had left Pushpa in the house and proceed to her village.

. So far as the incident is concerned, Pw.3 has deposed that on 8.1.1998 he received a message from his sister (Pw.5) that Pushpa has suffered burn injures. He has conveyed the said incident in the house of the accused. Already they had learnt about it. He proceeded towards the civil hospital Nashik and he reached to the civil hospital at about 9.00 a.m. on 8.1.1998. On being enquired with Pushpa as to how the incident has happened, this witness has deposed that the deceased Pushpa told him that the accused was demanding an amount of Rs.50,000/- and that when she was asleep the accused poured kerosene on her face and therefore she was awaken. Having noticed that kerosene cane in the hands of the accused, she was afraid, and while she was trying to run away from the room, accused threw on her person

a burning match stick and set her on fire. He has further stated that after the death of Pushpa the post mortem was carried out and after the post mortem the dead body of Pushpa was handed over to him. He has proved Exhibit 20 to that effect. In the cross examination of this witness nothing has transpired so as to disbelieve his testimony and except denial there is nothing in the cross examination. Though it is tried to be brought on record that there is some change in the version which was deposed to by this witness in court and before the police, yet it is not brought on record what is the actual variance so as to point out the contradictions which will lead to disbelieve this witness. On the contrary, it transpires from the cross examination of this witness (Pw.3) that he had been to the hospital at 9.00 a.m. on 8.1.1998, by that time the statement of Pushpa was already recorded by Pw.6, (Special Judicial Magistrate) which is at Exhibit 29. All that suggestions to the effect that there was no demand of amount of Rs.50,000/- and that the accused did not pour kerosene on the person of Pushpa, etc., have been categorically denied by this witness. We find that this witness is reliable one and his testimony is equally acceptable to us.

12. Pw.1, Hirabai Balasaheb Mhaskar was having cordial relations with Pw.5 (i.e., Shakuntalabai, mother of the deceased Pushpa), as both of them were working together with one Mangaldas Govind Thakkar. Pw.1 was the mediator for settling the marriage of the accused and deceased Pushpa. This witness has also deposed that the marriage of Pushpa and accused was performed on 28.6.1997 and at that time the accused was working as a watchman in Kadva sugar factory. It is further deposed that after marriage, Pushpa was residing with accused in his village at Khadaksukhane and thereafter the accused and deceased were residing at sugar factory. This witness has further stated that her parents village is Ozarkhed and this witness (Pw.1) used to visit the residence of the accused at factory site, on a way to Ozarkhed. Therefore, this witness used to meet deceased Pushpa. This witness has stated that there used to be quarrels between the accused and Pushpa and at times the accused was not speaking with this witness. It is further deposed by this witness that Pushpa initially did not disclose the cause of quarrel but during the occasion of fare of Champashashti at Varkheda, Pushpa had told this witness that accused was

demanding Rs.50,000/- for purchasing motor cycle. It is further deposed that Pushpa had been to the village of this witness on the eve of Diwali in 1997 and that on enquiry Pushpa replied that this witness knew the plight of the accused and proceeded towards the factory site.

. Pw.1 has further stated that on 8.1.1998 she received a phone message from the factory site that Pushpa had sustained burn injuries and she was taken to the Civil Hospital. Therefore, this witness along with the mother of Pushpa (Pw.5) had been to the civil hospital and they have seen Pushpa. This witness has deposed that on enquiry with Pushpa, she told that when she was asleep, accused poured kerosene on her face and then she got up and started to run away removing the latch of the door, till then the accused threw a burning match stick on her person and she sustained burn injuries. It is further disclosed by Pushpa to this witness that she came out in that condition and neighbourers arrived there and extinguished fire and she was brought to the civil hospital. The cause disclosed by Pushpa for the incident was that the accused asked her to bring Rs.50,000/- from any source. In cross-examination it was asked to this witness as to

how this witness got information, whereupon this witness disclosed the name of the neighbourer, one Mr. Khadake and even the telephone number of said Mr. Khadake was given by this witness being 50730. She has also disclosed that one Balasaheb Bombale from the Kadva Sugar factory had telephoned her. Thereafter, along with Pw.5, this witness went to civil hospital, Nashik. Rest of the cross-examination is in respect of the denials of statements given by this witness in the chief-examination.

. So far as the oral dying declaration is concerned, it was suggested to this witness that Pushpa was not in a position to speak, which suggestion was denied by this witness. This witness has deposed in cross examination that prior to the marriage of Pushpa with the accused, Pushpa was unmarried and there was no talk of marriage pertaining to Pushpa with any other person prior to the settlement of marriage of Pushpa with the accused.

13. It was suggested that Pushpa poured kerosene on herself and set herself on fire and committed suicide. The said suggestion has been

denied by this witness. It was also asked as to whether the complaint in respect of the illtreatment was lodged, whereupon this witness deposed that it was not given. Going through the testimony of this witness, it is sufficiently established that this witness has supported and corroborated Pw.5 (Shakuntalabai) on a point of marriage of Pushpa with the accused, their initial stay at Khadaksukhane, and thereafter at factory site, and that after the incident both Pw.1 & Pw.5 had visited the civil hospital where Pushpa disclosed about the incident and thus supported the oral dying declaration of Pushpa as deposed to by Pw.5. So far as this witness is concerned, the accused has accepted that this witness was the mediator for the marriage and that while this witness was visiting her parental house at village Ozerkhed this witness used to visit the house of the accused and used to see the deceased Pushpa. Thus from all this evidence it appears that this witness is a natural and independent witness though having cordial relations with Pw.5 yet was not related to Pw.5. The testimony of this witness is most natural, consistent and unshattered in the cross-examination.

Therefore, we accept the said testimony.

14. Pw.7 Leelabai Raju Bendkule is the neighbourer of Pw.5. She has deposed that on 8.1.1996 she found that the house of the Pw.5 was closed and on enquiry learnt that Pushpa had sustained burn injuries and she was admitted in civil hospital, Nashik. She visited the deceased on 9.1.1998 in the morning when Pushpa disclosed to this witness about the incident dated 8.1.1998 of pouring kerosene and setting her on fire. This witness has also deposed that when Pushpa had been to her mother, this witness had called Pushpa for tea and asked as to how Pushpa was appearing nervous. Pushpa disclosed that accused was demanding Rs.50,000/- for motorcycle and that witness should not convey this fact to Pw.5 since Pw.5 was ill. Though this witness was cross examined in detail, the cross examination does not suffer from any infirmity and is acceptable and it corroborates with material facts deposed to by Pw..5

15. Thus, Pw.1, 3, 5 & 7 are the witnesses who have deposed in respect of the illtreatment and harassment given by the accused and demand by the accused of Rs.50,000/- for purchasing motor cycle. This witness has further deposed that when this witness had seen the deceased in hospital, the

deceased had disclosed to them that on account of demand of Rs.50,000/- kerosene was poured on her face and that she got up and tried to run away from the said room, the accused threw a burning match stick on her person and set her on fire. This evidence of this witness is quite reliable and genuine one and we accept the same.

16. Pw.6, Sudhakar More, is the Special Judicial Magistrate. He is in government service working in the Urban Development and Legal Department as a clerk. He is B.A. (Hon.) LL.B and while he was in service he completed education and was appointed as Special Judicial Magistrate. He has recorded the statement of the deceased Pushpa at Exhibit 29, which is treated as a dying declaration after the death of Pushpa. Pushpa was admitted in the civil hospital at 6.40 a.m. by Pw.10 (Dr.Madhukar Shankhpal.) then said Doctor had informed to the police constable Shri. Shinde of Panchwati police station. Therefore, said Mr. Shinde issued a letter making a request to record the statement of Pushpa. This letter has been produced by Pw.6 at Exhibit 26. Said letter was received by Pw.6 at about 8.10 a.m. on 8.1.1998 while Pw.6 was at home. Pw.6 has deposed that he

immediately proceeded to the civil hospital and contacted casualty medical officer Mr. Shankhpal and requested Dr. Shankhpal to examine the patient and to certify about the condition of the patient to give statement. It is further deposed by this witness that Doctor Shankhpal examined Pushpa and gave a certificate to the effect that Pushpa was able to make a statement. He has proved the endorsement made by Dr. Shankhpal on the dying declaration. Pw.6 further stated that after obtaining the endorsement from the Doctor (Dr. Sankhapal) he asked all the relatives and other persons including the police present there to leave the place where Pushpa was and ensured that there was no one with Pushpa, except Pw.6 and there is no burden or pressure on her from anybody. He has stated that he disclosed his identity to her and also disclosed that he has come to record her statement. Thereafter this witness had put up the questions to Pushpa in Marathi. The statement was recorded in question-answer form.

17. From the testimony of this witness (Pw.6) it is revealed that this witness had come to the civil hospital at 8.30 a.m., endorsement about the fitness of Pushpa was made by 8.35 a.m. and this

witness started recording the statement of Pushpa at 8.40 a.m. and completed it at about 8.55 a.m. Thereafter Dr. Shankhpal gave another certificate that Pushpa was in a fit condition to give a statement. Thus, Exhibit 29 was completed. It is revealed on perusal of Exhibit 29 that this witness had come to the hospital at 8.30 a.m. and that statement was over by 9.00 a.m. The second endorsement of Dr. Shankhpal was at 9.00 a.m. This witness has further stated and proved that while recording the statement, this witness had put a corban copy and has stated that immediately after the completion of the statement the carbon copy of Exhibit 26 and carbon copy of the statement Exhibit 28 were handed over to the police constable Shinde, who had given a letter requesting Pw.6 to record the statement of Pushpa. He has further stated that the original dying declaration is at Exhibit 29 along with original request letter (Exhibit.28). Those were sent along with a letter Exhibit-27 to J.M.F.C., Dindori since the offence according to the witness was falling within the jurisdiction of the Dindori Magistrate. He has stated that the said dying declaration, namely, Exhibit-29 and requisition Exhibit 28 and letter written to the J.M.F.C., Dindori were forwarded to the J.M.F.C.

through the C.J.M. Nashik. Thus, original dying declaration and those letters in original and carbon copy were proved by this witness. This witness has also identified envelope Exhibit 31 which was forwarded to J.M.F.C., Dindori.

18. This witness, (Pw.6) has further stated that by Exhibit 29 Pushpa has disclosed to this witness that while she was sleeping, at 4.00 O'clock in the morning, the accused had poured kerosene on her person and it has fallen on her face. Therefore, she got up. She tried to run away by opening the latch of the door but the accused thrown a burning match stick on her person and thereby she suffered burn injuries. She further told this witness that she had sustained burn injuries and she ran out from the room and neighbourers had pressed quilt on her person and extinguished fire. On being asked as to why her husband had set her on fire, Pushpa told that since last two/three days accused was quarrelling with her and was insisting to bring the money. The deceased told this witness not to disclose this fact to parents. On being asked as to why he wanted money, she has replied that accused wanted money for motorcycle and he was demanding Rs.50,000/-. Sufficient cross examination was

carried out, however, nothing fruitful or which would disbelieve this witness has transpired. The only suggestion which was given to this witness was that Pushpa was not able to speak and that Pushpa had not given any statement. However, we find that the testimony of this witness is absolutely reliable. This witness is an independent witness and he has followed the procedure of recording the dying declaration meticulously. He has also recorded the dying declaration in the question-answer form, in the language of the deceased, namely, Marathi. This statement was recorded after obtaining the endorsement from Dr. Shankhpal to the effect that Pushpa was in a position to make a statement. This witness has denied the suggestions that the deceased was not in a position to make a statement and was not in a position to speak. We find that the testimony of this witness is reliable and we accept the same to be true version of the statements recorded after due care.

19. Exhibit 29 is further proved from the statement of Pw.10 (Dr. Madhukar Shankhpal). Dr. Shankhpal had admitted the patient and thereafter had informed the police to make an arrangement to

record the statement of Pushpa. This witness also stated that in between 8.45 to 9.00 a.m. the statement of Pushpa was recorded by Pw.6 (Sudhakar More, Special Judicial Magistrate). He has proved both the endorsements made on Exhibit 29 and stated that first endorsement was made when Pw.6 came to hospital for recording statement and the second endorsement was made when statement was complete. Suggestion given to this witness that the deceased was not in a position to speak and that these endorsements were made by this witness while sitting in cabin and without examining the patient. All these suggestions have been denied by the witness. Though serious cross examination has been carried out, nothing has transpired to disbelieve this witness.

20. Thus, on reading the statement of Pw.6 Sudhakar More and Pw.10 (Dr. Shankhpal) it is established that the statement recorded by the Special Judicial Magistrate (Pw.6) is genuine and truthful statement of deceased Pushpa.

21. Much grievance has been made by the defence on a ground that Pushpa was educated and was able to sign, however, dying declaration contains

her thumb impression. Pw.6 has explained that due to burn injuries it was not possible for the deceased to sign the statement and therefore, the left hand thumb impression of the deceased had been obtained. It requires to be stated that it has been proved from the testimony of both the Doctors (Pw.10 & Pw.11) that Pushpa had received 95% to 100% burn injuries, therefore, in such condition even though Pushpa may be literate one it was not possible for her to sign the document, naturally Pw.6 has taken a thumb impression. The grievance of the defence that the signature should have been obtained, therefore, carries no substance and in any way does not impress us so as to disbelieve the testimony of Pw.6 & Pw.10. We, therefore, hold that the statement recorded by Pw.6 below Exhibit-29, namely, the dying declaration is true, genuine and reliable one.

.. We also find support to our above proposition in **(2004) 10 SCC 776 in the matter of Ravi and Ano. v/s. State of Tamil Nadu** wherein the Apex Court has held that the veracity of dying declaration cannot be doubted in any manner on the ground of dying declaration not having been signed even though the declarant was literate when the Doctor concerned had not only certified the fitness

of the state of mind of declarant at the foot of said declaration, but on a specific query pertaining thereto raised by the Magistrate in Court, had answered in the affirmative, that the declarant was fully conscious and in a state to answer questions put to him.

22. Learned counsel for the appellant relied upon 1996 **CRI.L.J. 1507 (Krishna Chandra v/s. The State)** and submitted that the dying declaration is not reliable. He submitted that Certificate of Doctor stating that the declarant was fully conscious is not sufficient, but the Magistrate himself must ascertain the mental state of the declarant and also record the question put to the declarant. He has submitted that if the declarant is not giving coherent and consistent statements regarding roles played by the accused, blood pressure and pulse of declarant not recordable at the relevant time with declarant having 100% burn injuries then the statement is not reliable one. Thus, the learned counsel made submissions relying upon the facts as disclosed in the reported judgment. It is to be noted that in the present case that the certificate given by Pw.10 (Dr. Shankhpal) is not simply that the patient is

conscious but the certificate states that "**patient is in the state to give statement**". Thus, Pw.10 has certified that the patient was in a state to make a statement. The cross-examination of Dr. Shankhpal in this respect also shows that by the said endorsement, Dr. Shankhpal conveyed that patient - declarant was in a fit state of condition to make a statement. It is further revealed that in the dying declaration Exhibit-29 nothing coherent and inconsistent material was brought on record so as to doubt the mental condition of the declarant. On the contrary, we have noted that the dying declaration was coherent and consistent and it is recorded in question - answer form. It is nobody's case that the blood pressure and the pulse of the deceased Pushpa was not recordable. Therefore, the only aspect which is similar to the reported judgment is that Pushpa was having 95-100% burn injuries. However, the rest of the facts are absolutely distinguishable. Therefore, the reported judgment and the ratio therein is not applicable to the facts of the present case.

23. Learned counsel thereafter relied upon **1997 Cri.L.J. 372 in the matter of Ram Singh v/s. The State** and submitted that where there is a

veracity in the dying declaration and the burn injuries are 100% all over the body coupled with upper layer of skin all over body damaged and pulled off, the dying declaration is not reliable. We have looked into the facts of the said case. It is to be noted that in the said case the dying declaration of the declarant was suffering from the veracity and also the upper skin layer all over the body was damaged and pulled out and under these circumstances the Court expressed doubt about the thumb impression. It is further to be noted that in that case the certificate that the deceased was in a position to make a statement was given. That statement was actually recorded after six hours after the said statement was given and at the time of recording of statement no nurse or doctor was present. Thus, taking into consideration these facts, the dying declaration was not believed. However, that is not the case in the present matter. It will be seen from the above discussion and the facts that at about 8.10 a.m. Pw.6 received a requisition from the Panchwati Police station; Pw.6 came to civil Hospital, Nashik at about 8.30 a.m. and at 8.35 a.m. the endorsement by Dr. Shankhpal (Pw.10) in respect of the fitness of the declarant to make a statement was made and thereafter

immediately statement was recorded at about 8.40 a.m. to 8.55 a.m.. The second endorsement was made by Dr. Shankhpal to the effect that the patient was in a fit condition to make a statement at 9.00 a.m. All theses admitted facts show that the statement was recorded within a less than two hours after Pushpa was admitted in the civil hospital and it is recorded by the Magistrate in the presence of the Doctor who has certified that Pushpa was in a position to make a statement. It is further to be noted that both the witnesses have stated that the thumb impression was taken. In the present case of Pushpa though she had received burn injuries, her skin was not pulled out. Under these circumstances, the facts of the present case are not akin to the facts involved in 1997 Cri.L.J. 372 (supra).

24. Learned counsel then relied upon **AIR-1953 SC 420 (Ram Nath Madhoprasad and others v/s. State of Madhya Pradesh)** and submitted that it is not safe to convict an accused person merely on the evidence furnished by way of a dying declaration without further corroboration, because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion

and might well be drawing upon his imagination while he was making the declaration. This is very old ratio. The Apex Court has changed the view, earlier it was that the dying declaration should have corroboration and unless it is corroborated the conviction should not be based upon it. The latest view of the Apex Court is that the conviction can be based simplicitor on dying declaration if it is found that the dying declaration inspires confidence. In this regard, reference can be made to **(2004) 10 SCC 776 in the matter of Ravi and Another v/s. State of Tamil Nadu,** wherein the Apex Court has held that *It is well settled that if the truthfulness or otherwise of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever, in law.*

25. Assuming for a moment that the ratio of the aforesaid 1953 Cr.L.J. 420 case is still good, it requires to be stated that there is evidence of Pw.6 who is the special judicial magistrate and Pw.10 (Dr. Shankhpal). Both these witnesses are independent witnesses having no interest in the conviction of the accused and they have taken every precaution to record the statement in a proper way

as discussed above. Apart from this, in order to corroborate the statement made by the deceased Pushpa at Exhibit 29, there are oral dying declarations which have been deposed to by deceased Pushpa to Pw.1, Pw.3, Pw.5 and Pw.7. We have already discussed and we have found the same to be reliable one. Thus, the dying declaration in the present case is corroborated by the testimony of these witnesses who have deposed to in respect of the oral dying declaration of the deceased. Apart from this, the spot panchnama (Exhibit 18) of the spot wherefrom article 1 to 4 were recovered mentions that it was smelling of kerosene and Exhibit -15 Chemical Analyser's Report also shows that these articles were having reminisces of kerosene. This also corroborates the evidence of these witnesses to the effect that the kerosene was poured on the person of Pushpa and she was set on fire. Thus, we find that in the present case the dying declaration is having corroboration in material particulars from various sources as discussed above. Therefore, we find that the dying declaration made by Pushpa is acceptable one and is free from any doubts or any irregularities.

26. It is revealed from the testimony of Pw.13 and endorsment made on Exhibit 48 that the offence under section 307 and 498A of IPC was registered on 8.1.1998 at about 8.20. It has transpired in the cross examination of Pw.12 that the copy of FIR was sent to the JMFC Dindori on 2.2.1998 as is revealed from Exhibit 48 which is the copy of the FIR received by the JMFC. Relying upon these facts, the learned counsel for the appellant submitted that the delayed communication of the FIR shows that the FIR is concocted one and was not registered at the relevant time. In support of his contention he relied upon **AIR 1973 SC 501 (Thulia Kali vs. the State of Tamil Nadu).** Learned counsel pointed out that the FIR in a criminal case is an extremly vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the stand-point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed. The names of the actual culprits and the parts played by them as well as the names of eye witnesses present at the scene of

occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained. Applying this test to the present facts, the incident was that way between the accused and the deceased, and according to deceased Pushpa, the accused had poured kerosene on her person and set her on fire since the demand for Rs.50,000/- was not satisfied. The statement of Pushpa was recorded at about 8.30 a.m. to 9.00 a.m. on 8.1.1998 by Pw.6 (Special Judicial Magistrate) immediately after her admission in hospital. The evidence of Pw.6 has already been discussed in other part of the judgment. Suffice it to say that immediately a copy of statement, i.e., Exhibit 29, namely, Exhibit 30 was given to police constable of Panchwati police station who had handed over it to police constable Mr. Kathe of Dindori police station who was deputed to collect those documents by Pw.12 (Jagnnath Kale,

ASI). After getting those documents, immediately the crime was registered. Not only that it has transpired from the cross examination of Pw.12 that he thereafter visited Pushpa and confirmed the statement recorded by Pw.6 and recorded another statement of Pushpa. It is further to be noted that immediately on the next day at about 5.00 p.m. the accused was arrested and Pushpa died on 9.1.1998 at about 10.15 p.m. Thereafter inquest (Exhibit-11) was carried out at about 7.00 on 10.1.1998 and after completion of the post mortem the advance death certificate (Exhibit 42) was obtained in respect of the cause of death of Pushpa. This information was transmitted by Sarkarwada police station to Dindori police station. On the basis of the information of death, section 302 of IPC was added and the information in respect of the addition of the said section was immediately sent to the JMFC on 10.1.1998. The said letter is at Exhibit 45. Thus, it transpires that the information in respect of the registration of crime under section 302 was immediately communicated to the JMFC, Dindori and this aspect has been clearly established. Thus, what transpires is that upon registration of serious offence under section 302, it was immediately communicated to the JMFC, Dindori. Therefore, late

communication of the FIR under sections 307 and 498A was of no consequence.

27. Apart from that, in the present matter there is evidence of Pushpa in the form of dying declaration, on the basis of which the offence has been registered. Therefore, there is no chance available to have concoction and/or manipulation. The defence has also not pointed out as to how, as a result of the late communication, prejudice has been caused to the accused. Therefore, this aspect has been rightly analysed by the Sessions Judge and it has come to the conclusion that the late communication of information in respect of the registration under sections 302 and 498A does not affect the case in any way and the accused is not entitled to get benefit of the said fact. On the contrary, it is established that the offence has been informed to the JMFC on 10.1.1998 immediately after the addition of the said section after the death of Pushpa. Therefore, the submission of the learned counsel is without any merit and it is hereby rejected.

28. It requires to be stated that the investigation in the present matter though

criticised by the learned counsel for the appellant, is quite fair and just, because the incident had taken place at a sugar factory within the jurisdiction of Dindori police station at about 4.00 a.m.. Thereafter, it is revealed from the testimony of Pw.9 (Shivaji Thombare) that, Pushpa was taken from the said spot to the civil hospital Nashik and was admitted at about 6.40 a.m. Thereafter. Pw. 10 (Dr. Shankhpal) informed to the Panchwati police station to make an arrangement in respect of the recording of a statement of Pushpa. In accordance with that, constable Shinde had issued a requisition Exhibit-26, which was received by Pw.6 at about 8.10 a.m. and the Special Judicial Magistrate (Pw.6) arrived in the hospital at about 8.30 a.m. After having satisfied himself with the aid of Pw.10 (Dr. Shankhpal) that the patient was in a position to make a statement, the statement of Pushpa was recorded between 8.40 a.m. to 8.55 a.m. Thereafter carbon copies of Exhibit 26 and Exhibit 29 were given to Mr. Shinde. Mr. Shinde, who in turn handed over all those documents to Mr.Kate of Dindori police station who was deputed by Pw.12. Thereafter offence was registered and after the registration of the offence, Pw. 12 has immediately taken steps to visit the civil hospital and again

got confirmed the statement of the deceased and recorded another statement under section 161 of the Code of Criminal Procedure and registered the crime. It is further to be noted that immediately the Panchnama, Exhibit 18, was prepared on 8.1.1998 at about 21.15 to 22.30 hours and the said Panchnama has been proved by Pw.2, Nandu Ghatkar. Articles 1 to 4 were seized under the said Panchnama. Accused was arrested on the next day at about 5.00 p.m. At about 10.15 p.m. on 9.1.1998 Pushpa had succumbed to the death because of the burn injuries. The inquest panchnama was carried on 10.1.1998 at about 7.00 to 7.30 by police constable of Sarkarwads Police station who was on MLC duty in the Civil hospital Nashik on that day. Pw.11 has proved the requisition given by police constable of Sarkarwada police station and the report. Pw.11 has also proved the post mortem and advance death certificate. It has further transpired from the evidence of Pw.12, apart from the fact of registration of the crime and arrest of the accused, that articles which were collected at the time of panchnama- Exhibit 18 were sent to the Chemical Analyser by the letter Exhibit 47. The report of Chemical Analyser has been received on 13.4.1998 which is at Exhibit 15. It has further transpired

from the testimony of Pw-12 and Pw-14 that the investigation of the crime till Section 302 was added was carried out by Pw.12 and after section 302 was added, the investigation was carried out by Pw.14 and after completing the investigation the charge sheet has been filed.

.. All this course of investigation shows that the police were prompt in investigating the offence and they have fairly and promptly carried out the investigation. Therefore, the attempts made by the learned counsel to challenge the investigation being unfair and not being just is without any merit.

29. Learned counsel for the appellant has made a grievance in respect of the non examination of the police constable Mr. Shinde of Panchwti police station. He has also made a grievance in respect of the non examination of police constable Mr. Kate, who had collected the documents Exhibits 26 and 30 from police constable Mr. Shinde and handed over them to Pw.12 for registration of the crime. However, said act is of no consequence, because from the testimony of Pw.6 it has been established that the police constable Mr. Shinde of

Panchwati police station had given a requisition Exhibit 26. Pw.12 has deposed that police constable Kate was deputed to record the statement of Pushpa who collected the document and handed it over to Pw.12. Except the collection of the documents from the Panchwati police station, no other act has been done by Mr. Kate. Therefore, examination of Mr. Kate is of no consequence. Said information was collected by Mr. Kate, has been proved and established by the testimony of Pw.12. Therefore, the link in the investigation has been properly established. The grievance of the learned counsel for the appellant, therefore, is without any merit.

30. Learned counsel further submitted that Exhibit 11 (Inquest Panchnama) is accepted by the defence and he pointed out that one of the panch to the said Exhibit-11 is Pw.1 (Hirabai Mhaskar). He submitted that the said panchnama disclosed in its introductory part that- Pushpa Bhausaheb Shinde of Kadva sugar factory had poured kerosene on her own person and suffered burn injuries upto 95% and while taking treatment she expired on 9.1.1998 at 22.15 hours and she was admitted in hospital by her husband and, therefore, panchas should examine the dead body and prepare the report of it.

. Learned counsel for the appellant heavily relied upon these statements and stated that the prosecution evidence shows that Pushpa had poured kerosene on her own person and has committed suicide. Pw.1 Hirabai is a party to this information. The Sessions Judge has rejected this submission of the learned counsel. We also do not find any merit in the said submission of the learned counsel for the appellant.

. Exhibit 11 is an Inquest Panchnama. It was prepared to show the physical condition of the deceased and to find out what were the injuries on the person of the deceased prior to the post mortem of the said dead body. Therefore, panchnama is relevant to the extent of physical position of the deceased and the injuries on the person of the deceased. Any statement made by the police and/or panch witness in the inquest panchnama is of no consequence. It is to be noted that the alleged statement which is appearing in the introductory part is not deposed to by Pw.1 and other witnesses to the said panchnama. It has been stated by the police constable in the introductory part. However, the said introductory part is incorrect version

given by the police constable of Sarkarwada police station, because the Inquest Panchnama has been prepared on 10.1.1998 at about 7.00 a.m. to 7.30 a.m.. However, prior to that on 8.1.1998 the statement of deceased Pushpa was recorded by Pw.6 (Special Judicial Magistrate - Sudhakar More) wherein Pushpa had indicted the accused and had stated that the accused poured kerosene on her person and set her on fire for a demand of Rs. 50,000/- for the purchase of motor cycle and on that basis the crime was already registered at Dondori police station. The earlier statement of Pushpa was recorded when police constable Shinde was on MLC duty at Nashik Civil Hospital and he has transmitted those papers to the Dindori police station. Therefore, at the time of inquest panchnama (Exhibit 11) was being prepared those documents were not available with police constable of Sarkarwada police station who was on MLC duty at the relevant time and must not be aware of the earlier statement made by Pushpa. Therefore, the statement which is occurring in the introductory part of Exhibit-11 cannot give any benefit to the defence and it cannot be inferred that Pushpa has committed suicide.

31. One of the grounds raised by the learned

counsel for the appellant is that the prosecution has failed to examine the witnesses from the factory site who were present at the time of the incident and had extinguished fire on the person of Pushpa. He pointed out that Pw.12 and Pw.14 have admitted that they have recorded the statements of persons who were immediate neighbours and residing close to the place of the incident, but none of them have been examined and, therefore, the adverse inference may be drawn. He relied upon AIR-1973 SC 501 referred to above. We have recorded this submission of the learned counsel only to reject it; Because the immediate neighbour of the accused, who was residing opposite to the room of the accused, namely, Pw.9 (Shivaji Thombare) has been examined by the prosecution and the testimony of the said witness has not been challenged by the accused. Therefore, it cannot be said that the prosecution has suppressed any evidence and much more the evidence of any adjoining neighbours. Therefore, the said submission of the learned counsel is hereby rejected.

32. The accused in the present matter has examined in all five witnesses as defence witnesses including himself. Dw.2, Ashok is the brother of

the accused. Dw.3 Kashabai is the wife of the Dw.2, i.e., sister-in-law of accused. Dw.4 is Kamalabai Shinde who is mother of the accused. These three witnesses have been examined to show that the deceased was properly treated by these witnesses. Dw.2 has been examined to controvert the testimony of Pw.3 and Pw.5 on the point that at the intervention of this witness (Dw.2-Ashok) the deceased Pushpa was sent to the accused. Dw.2, 3 & 4 have deposed that Ashok had not intervened and had not brought Pushpa at the house of the accused. Therefore, these testimonies lead nowhere so far as the defence case is concerned. Because, according to the prosecution also after the marriage of Pushpa with the accused, initially for a period of two months, Pushpa had stayed at Khadaksukhane along with her in-laws, namely, Dw.2, Dw.3 and Dw.4. It is the prosecution case that Pushpa was nicely treated initially. The prosecution case is that after Pushpa and accused started residing at factory site, accused started harassing her for a demand of Rs.50,000/- for purchase of motorcycle. Therefore, claim of the prosecution in respect of the harassment of the deceased Pushpa at the hands of the accused and incident deposed to that effect by the prosecution witnesses had taken place at factory

site and none of these persons, namely, Dw.2, Dw.3 & Dw.4, were witnesses to the said incident. Therefore, the testimony of these witnesses cannot be taken as a testimony to show that the accused has properly treated the deceased Pushpa while accused and Pushpa were residing at the factory site. Their evidence on that point cannot be accepted.

33. So far as the evidence of Ashok on the point that he had not intervened in the dispute of accused (his brother) and Pushpa is concerned, the same cannot be accepted, because in matrimonial litigations when the relations are strained, it is only the in-laws who take part in settling the dispute between the husband and wife. Therefore, the prosecution case is more natural that Ashok who is the elder brother of the accused had intervened and tried to settle the dispute between them. Therefore, the evidence of this witness of defence that he had not intervened is not acceptable and is not convincing. We, therefore, ultimately find that the evidence of Dw. 2, 3 & 4 is of no consequence so as to support the defence.

34. Dw.1 is the accused himself. He has deposed that he has studied upto 4th standard while

Pushpa had studied upto 9th standard. He has further stated that he was employed on daily wages in sugar factory, initially as a labourer, and thereafter as a watchman. He has further deposed that he married with late Pushpa and that the maternal uncle of Pushpa, namely, Pw.3, performed the said marriage. Accused had also accepted that he and Pushpa resided at village Khadaksukane along with his mother, brother and wife of his brother. He has stated that relations of Pushpa while she was residing at Khadaksukhane were good with him and his family members. He has stated that he got a room at sugar factory prepared of mattings, it was only 7 X 8 feet room. He stated that it was a temporary accommodation given to him. He denied that on 6.1.1998 mother of Pushpa had been to his house and that he had demanded Rs.50,000/- for purchasing the motorcycle. He stated that he had taken a leave for two days since he was ill and he had taken treatment from medical officer. He has stated that on 7.1.1998 during evening he took meals at about 7.00 p.m. to 8.00 p.m. and entered bed at 9.00 p.m.. At that time according to him, Pushpa was not sleeping with him but she was sleeping at some distance from him. He stated that he was sleeping covering his face and head and Pushpa had locked the

door. He further stated that he was awaken by other persons due to the incident. He has stated that his neighbour - Niphade awakened him and told him that Pushpa had suffered burn injuries and at that time he was not able to follow anything. He stated that when he got up Pushpa was lying at a distance of 70 - 80 feet from the room. Thereafter, he stated that Dr. Pagare was brought to examine Pushpa, he (Dr. Pagare) advised to take Pushpa to hospital. He stated that he personally telephoned to the mother of Pusha and thereafter brought Pusha to the civil hospital. He stated that Mr. Patil, Thombare and Pawar of the factory were with him who shifted Pushpa to the civil hospital. Thereafter, he stated that Pusha was admitted in the civil hospital. According to the accused, the mother of Pushpa arrived in hospital at 12.00 to 13.00 hours and the maternal uncle of Pushpa, namely, Pandurang, came at 9.00 p.m.. He has stated that several medical officers attended Pushpa. He has stated that because of the total burn injuries over her body, Pushpa was lying on the bed facing towards sky, her eyes were open, she was not able to see, her mouth was closed and total skin was burn. He stated that he was with her for three days. He has further stated that when mother of Pusha enquired with him

as to how the incident had happened, he told mother of Pushpa that he had no knowledge since he was fast-asleep. He has further stated that his family members had arrived in the hospital at about 8.00 to 9.00 a.m.. He has categorically denied the oral dying declarations deposed to by prosecution witnesses. He has also categorically deposed that those witnesses are deposing in favour of the prosecution to support Pw.5 (Shakuntalabai) due to the death of Pushpa. He submitted that the relatives of Pushpa had tutored her. He denied dying declaration, Exhibit-29, and thumb impression of Pusha on said document, Exhibit-29. Thus he challenged the evidence of Pw.5. According to him, Pushpa told him that her mother and Hirabai were insisting her to marry with another boy. Therefore he told Pusha that he intended to see that other boy, whereupon Pushpa told accused that she had not seen that boy and could not show that boy to him. He has further deposed that after the disclosure of this information, on the second day, Pushpa sought his permission to proceed to her mother. He has stated that he permitted Pushpa under the impression that some relatives must have come. However, Pushpa refused to go. He further deposed that Pushpa told him that her mother had no feelings for talking

about marriage of Pushpa with some other boy. Accordingly, Pushpa proceeded with her mother, thereafter she returned and on the very night the incident took place. Pushpa had told him that other boy had approved her. He has further stated that since she was to be given in marriage to some other boy, hence said act was committed by her (i.e., she set herself on fire.).

35. Thus, on going through the examination in chief of the accused, it appears that according to the accused Pushpa has committed suicide since her mother and Pw.1 Hirabai were insisting her to marry with some other boy and for that purpose Pusha was shown to that boy and that boy had approved her, thereby Pusha became panic and committed suicide. It is to be noted that this statement is a simplicitor a statement for the purpose of denial of the prosecution case. However, from the statement of the accused, it is accepted that the accused and Pushpa were married and they stayed at Khadaksukane initially after their marriage for a period of two months and thereafter shifted to factory site as accused was working there as a watchman on temporary basis and that temporary accommodation was allotted to him at factory site and both were residing there.

36. However, if the statement of the accused that the relatives of Pushpa had tutored her is to be decided in the backdrop of the testimony of this witness (i.e., the accused), it is found that the said theory developed by this witness is not convincing and is self-contradictory because it is established that the statement of Pushpa was recorded on 8.1.1998 in between 8.30 to 9.00 a.m. by the Special Judicial Magistrate. As against this, the accused has stated that the mother of Pushpa arrived in hospital at about 12.00 to 13.00 hours and Pw.3 (Pandurang, maternal uncle of Pushpa) arrived in hospital at about 9.00 p.m.. It is the prosecution case that the mother of Pushpa was accompanied by Pw.1 (Hirabai). Thus, if the statement of the accused is accepted in respect of the timings given in respect of the arrivals of Pw.1, Pw.3 and Pw.5, it will be noticed that all these witnesses arrived in hospital after the statement of Pushpa (dying declaration) was recorded by Pw.6. Therefore, when the dying declaration Exhibit 29 was recorded, there was no chance to tutor Pushpa.

37. It is further to be noted that story in

respect of Pushpa being shown to other boy and that other boy approving her and Pw.5 & Pw.1 were insisting Pushpa to marry with that boy when the marriage between the accused and Pushpa was subsisting, is something strange theory and is not acceptable to us. However, it is further to be noted that this story which has been deposed to by the accused in paragraph no. 8 of his examination-in-chief is absolutely a new theory, coming for the first time in the deposition of the accused. On the contrary, if we look to the suggestions given to Pw.1, Pw.3 and Pw.5 it can be seen that the suggestions were given that prior to marriage of Pushpa with accused, Pushpa was shown to some other boy who was more educated than the accused. Further it was suggested that the said boy was insisting for marriage with Pushpa. The accused has also stated that while he was fast asleep Pushpa committed suicide. If these stories put forth by the accused and suggestions given to the prosecution witnesses are taken into consideration, they are self contradictory. It has transpired from the testimonies of Pw-1, Pw-3 and Pw-5 that prior to the marriage of the accused with Pushpa, Pushpa was shown to no one and she was unmarried and there was no boy who was more educated than the accused whom

Pushpa was shown. Accused has also not brought on record any material to point out the name of that other boy and everything is absolutely an imagination of the accused for the purpose of defence that Pushpa committed suicide. It is pertinent to note that testimony of Dw.1 (accused) is an feeble attempt to contradict the prosecution case. Even on the preponderance of possibilities evidence of accused does not inspire confidence to establish the theory of suicide being committed by deceased Pushpa. Therefore, we find that the defence witnesses are of no help to the accused in the present case. Therefore, we record our findings, agreeing with the Sessions Judge, that the death of Pushpa was homicidal one and it was not suicidal one, as claimed by the accused. We also hold that it is the accused who poured kerosene on the person of Pushpa and while she was trying to run out of the room, accused threw a burning match stick towards her and set her on fire. We also find that Pushpa was harassed by the accused for an unlawful demand of Rs. 50,000/- for the purpose of purchase of motorcycle. Thus, we ultimately record our findings that the prosecution has established the case beyond reasonable doubt. The defence has miserably failed to explain the cause of death of

Pushpa. Thus, we find that there is no substance in the present appeal. Appeal is hereby dismissed.

(S.R.SATHE,J.) **(S.B.MHASE,J.)**